

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**IN THE MATTER OF**  
**Tom E. Jackson,**  
Petitioner-Appellant,  
v.  
**Union County Board of Review,**  
Respondent-Appellee.

**ORDER**  
  
**Docket No. 09-88-0024**  
**Parcel No. 24010-450-147-00**

On September 10, 2009, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Tom E. Jackson, requested this appeal be considered without hearing and submitted evidence in support of his petition. He is self-represented. Union County Attorney Timothy Kenyon is legal representative for the Board of Review. It submitted documentary evidence in support of its decision. The Appeal Board now having examined the file, reviewed the exhibits and being fully advised, finds:

***Findings of Fact***

Tom E. Jackson, owner of property located at 510 N. Cherry Street, Creston, Iowa, appeals from the Union County Board of Review decision reassessing his property. According to the property record card, the subject property is an 893 square-foot, one-story frame dwelling built in 1893 on a 0.165 acre site. The dwelling has a three-quarter unfinished basement, a wooden deck, and an 8 foot x 20 foot enclosed porch. It also has a detached one-car garage. The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$44,020, representing \$6890 in land value and \$37,130 in dwelling value.

Jackson protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). He claimed the property was

over-assessed by \$26,520 and that \$17,500, representing \$6900 in land value and \$10,600 in dwelling value, was its actual value and fair assessment. The Board of Review denied the petition stating, "Taxpayer failed to substantiate burden of proof." Jackson then appealed to this Board on the same ground.

Jackson purchased the property on July 22, 2007, for \$17,500 from EMC Mortgage Corporation. He provided copies of the Declaration of Value, Warranty Deed, and an affidavit signed by Rick Pettergrew of the John Real Estate Agency in Creston dated June 2, 2008, verifying the purchase price of the property. Jackson also provided six 2007 and 2008 sales he considered comparable to his property in age, style, and site. The sale price of the six properties ranged from \$14.68 to \$42.78 per square foot with a median of \$21.05 per square foot. The subject property sold for \$19.60 per square foot. Two of the sales were located on the same street and close to Jackson's property, and are the most similar in age, style, size, features, and site size. These two properties sold for \$22.38 per square foot and \$42.78 per square foot in 2007 and are assessed at \$43.18 per square foot and \$44.45 per square foot. The subject property is assessed at \$48.82 per square foot of living area, which is only slightly above the upper limit of Jackson's six comparable sales.

The Board of Review submitted a letter from Assessor Gene Haner, a copy of the sheriff's deed as evidence of the foreclosure action and the assignment to a mortgage company, and a copy of the warranty deed showing Jackson's subsequent purchase from that mortgage company to support its decision. Because of the history of the property proceeding Jackson's purchase, Haner believed this to be an abnormal sale under section 442.21(1)(b). We agree.

The Department of Revenue Abnormal Sales Conditions dated October 12, 2007, which lists sales conditions considered abnormal, in pertinent part, states:

Sheriff or tax sale. – Does not include the subsequent sale of property acquired from sheriff or tax sale.

Sale of property by lending institution which received such property as a result of loan default, forfeiture, or foreclosure action and relocation sales. -- Entities that service loans or buy mortgages (but do not originate loans) are not considered lending institutions.

In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined “[i]t is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value.” We are mindful of the fact that foreclosure or other forced sales and discounted purchase transactions are not considered normal transactions and require either exclusion or adequate adjustments to be used as comparative sales. *See* Iowa Code §441.21(1)(b).

Jackson’s property was involved in a foreclosure action and related sheriff’s sale on March 30, 2007, prior to his purchase of the property. The lender initiating the foreclosure, Wells Fargo, assigned their interest to EMC Mortgage who subsequently acquired the property at the sheriff sale. Since seller EMC Mortgage received the property on assignment from a lending institution as a result of the foreclosure action, the sale is considered abnormal. Even though a sale subsequent to a sheriff’s sale is not per say considered abnormal, that fact that the lending institution sold it after receiving it through foreclosure nonetheless makes the sale abnormal.

The statutory scheme for property valuation specifically excludes the use of foreclosure sales and sales of distressed properties in arriving at market value unless adjustments are made. *Wetlaufer v. Fayette County Bd. of Review*, 764 N.W.2d 783, 2009 WL 249644 (Iowa Ct. App.), §441.21(1)(b). For this reason Jackson’s unadjusted purchase price cannot be considered in arriving at the subject property’s assessment value as it is not a reliable indication of fair market value due to the conditions of sale.



Reviewing all the evidence, we are persuaded that the comparable sales data provided supports a finding that the assessment accurately reflects the fair market value of the property as of January 1, 2009.

### *Conclusion of Law*

The Appeal Board applied the following law in this appeal.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the

correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Viewing the evidence as a whole, we conclude Jackson failed to present persuasive evidence sufficient to support the claim that his property is assessed for more than authorized by law. The comparables indicate the assessed value was reasonable given the subject property's sale was abnormal, lacked necessary adjustment and did not represent the fair market value of the property.

We affirm the Jackson property assessment. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$44,020 representing, \$6890 in land value and \$37,130 in dwelling value.

IT IS ORDERED that the January 1, 2009, assessment as determined by the Union County Board of Review is affirmed.

Dated this 22 day of April 2010.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Richard Stradley  
Richard Stradley, Board Member

Karen Oberman  
Karen Oberman, Board Chair

Copies to:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4-22</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Jean Chapelle</u>

